In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1257

UNITED NEW YORK SANDY HOOK PILOTS ASSOCIATION AND UNITED NEW JERSEY SANDY HOOK PILOTS ASSOCIATION, PETITIONERS

v.

FREDERICK B. DENT, Secretary of Commerce, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners allege that the Department of Commerce and both courts below erred in holding that their proposed pilot station vessel would not qualify them for the tax benefits which the Marchant Marine Act of 1970 provides for the owners and lessees of vessels constructed and documented in the United States "for operation in the United States foreign * * * trade." 46 U.S.C. 1177(a).

Petitioners are two incorporated pilots associations which have contracted for the construction of a vessel that will receive and supply pilots who guide ships through the Port of New York. The proposed vessel

will be stationed in the vicinity of Ambrose Light, 22 miles from the southern tip of Manhattan and 14 miles from the entrance of New York harbor. The pilots will be transported in launches between the pilot station and the ships piloted.

Pursuant to 46 U.S.C. 1177(a), petitioners applied to the Secretary of Commerce for the tax benefits available for vessels to be used in the foreign trade. The Secretary denied the application, ruling that the proposed pilot boat is not eligible for benefits because it would not itself be operated in foreign trade and hence is not a "qualified vessel" within the meaning of Section 607(k)(2)(C) of the Act, 46 U.S.C. 1177(k)(2)(C).

Petitioners instituted suit in the district court challenging the Secretary's determination. The district court granted the Secretary's motion for summary judgment on the ground that the pilot vessel is not a "qualified vessel" since it is not "itself * * * engaged in foreign trade" (Pet. App. 4a). The court of appeals affirmed, noting that the proposed vessel does not come within the purposes for which Congress provided tax benefits for the owners or lessees of vessels built for operation in the United States foreign trade (Pet. App. 8a-10a).

The decisions below, involving the application of a narrow statutory provision to a limited factual situation, are correct and no issue warranting review by this Court is presented.

1. Petitioners seek to establish the eligibility of their vessel for tax benefits as one operating in foreign trade. However, in the context of the act as well as in ordinary language vessels engaged in foreign trade

are those vessels which carry goods or passengers between the United States and foreign countries, 46 U.S.C. 1244(a), or ships on a foreign mission which stop at intercoastal ports, 46 U.S.C. 1177(k)(5).[1] Petitioners' vessel, designed to operate no more than approximately 22 miles from the New York City shoreline (Pet. 8) and solely as a station from which pilots may be conveyed to vessels operating in foreign trade (Pet. 3), meets neither of these qualifications.

The cases which petitioners cite to support their contention that a pilot vessel is engaged in "foreign trade" (Pet. 11-13) all involved questions relating to "interstate commerce" and have no bearing on whether a pilot ship is a "qualified vessel" engaged in "foreign trade" under this recently enacted section of the Merchant Marine Act. The Maritime Administration's interpretation of these phrases to exclude a pilot ship was reasonable and was properly upheld by the courts below. *Udall* v. *Tallman*, 380 U.S. 1.

2. As the court of appeals correctly held (Pet. App. 9a-10a), the legislative purpose in granting tax benefits to certain ship owners and lessees under the Merchant Marine Act would not be served by granting such benefits to the owners of a pilot station, since pilot ships do not add to the sealift capacity of our merchant marine fleet. S. Rep. No. 91-1080, 91st Cong., 2d Sess. 21. Moreover, the tax benefit for ships engaged in foreign trade was specifically designed to enable those ships to compete successfully against lower cost foreign flag vessels. S. Rep. No. 91-1080,

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[1]Compare 46 U.S.C. 1177(k)(7) which specifically permits certain ocean-going tugs and cargo equipment to be included for tax benefits but does not mention pilot stations.

supra, at 42; H. Rep. No. 91-1073, 91st Cong., 2d Sess. 45-46. Petitioners are not engaged in such competition. To the contrary, they have a monopoly because every vessel entering or departing from New York must use a licensed Sandy Hook pilot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

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